

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

| | | |
|-----------------------------|---|---------------------------|
| JOSEPH MURCHISON, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Cause No. 4:09 CV 431 RWS |
| |) | |
| STEVE LARKINS, ¹ |) | |
| |) | |
| Respondent. |) | |

MEMORANDUM AND ORDER

This matter is before me on a Report and Recommendation to deny Petitioner Joseph Murchison's writ of habeas corpus under 28 U.S.C. § 2254. I referred this matter to United States Magistrate Judge Frederick R. Buckles for a report and recommendation on all dispositive matters pursuant to 28 U.S.C. § 636(b). On December 16, 2011, Judge Buckles filed his recommendation that Murchison's habeas petition should be denied.

Objections to Judge Buckles' Report and Recommendation were due to be filed by December 30, 2011. Petitioner requested and was granted an extension of time to file objections no later than January 30, 2012. As of the date of this order, no objections to the Report and Recommendation has been filed. After careful consideration, I will adopt and sustain the thorough and reasonable analysis of Judge Buckles and will deny Murchison's habeas petition for the reasons stated in the Report and Recommendation dated December 16, 2011.

I have also considered whether to issue a certificate of appealability. To grant a

¹Terry Russell is currently the warden at Eastern Reception, Diagnostic and Correctional Center, Petitioner's place of incarceration. Terry Russell should therefore be substituted for Steve Larkins as the Respondent in this case. See Rule 2(a), Rules Governing Section 2254 Cases in the United States District Courts.


certificate of appealability, the Court must find a substantial showing of the denial of a federal constitutional right. See Tiedeman v. Benson, 122 F.3d 518, 522 (8th Cir. 1997). A substantial showing is a showing that issues are debatable among reasonable jurists, a Court could resolve the issues differently, or the issues deserve further proceedings. Cox v. Norris, 133 F.3d 565, 569 (8th Cir. 1997) (citing Flieger v. Delo, 16 F.3d 878, 882-83 (8th Cir. 1994)). Because petitioner has not made such a showing in this case, I will not issue a certificate of appealability.

Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation filed on December 16, 2011 is **SUSTAINED, ADOPTED AND INCORPORATED** herein.

IT IS FURTHER ORDERED that Petitioner Joseph Murchison's Petition for Writ of Habeas Corpus is **DENIED**.

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability. A separate Judgment in accordance with this Memorandum and Order is entered this same date.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 1st day of February, 2012.